

EXHIBIT 178

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re:)	
)	Chapter 11
RS FIT NW LLC,)	
)	Case No. 20-11558 (KBO)
Debtors.)	
)	(Jointly Administered)
_____)	
24 HOUR FITNESS WORLDWIDE, INC.,)	
)	
Plaintiff,)	Adv. Proc. No.
v.)	20-51051 (KBO)
)	
CONTINENTAL CASUALTY COMPANY;)	
ENDURANCE AMERICAN SPECIALTY)	
INSURANCE COMPANY; STARR SURPLUS))	
LINES INSURANCE COMPANY; ALLIANZ))	
GLOBAL RISKS US INSURANCE)	
COMPANY; et al.,)	
)	
Defendants.)	
_____)	

REMOTE VIDEOTAPED DEPOSITION OF LOURDES REYES

DATE: THURSDAY, SEPTEMBER 29, 2022

TIME: 9:03 A.M.

LOCATION: REMOTE

REPORTED BY:

MARY JACKSON, CSR 8688

JOB NO. 76836

Page 2	Page 4
<p>1 A P P E A R A N C E S</p> <p>2 For 24 Hour Fitness:</p> <p>3 NAT OCHOA, ESQUIRE</p> <p>4 ELIZABETH BOWMAN, ESQUIRE</p> <p>5 REED SMITH</p> <p>6 101 2nd Street, Suite 1800</p> <p>7 San Francisco, California 94105</p> <p>8 415.659.4765</p> <p>9 nochoa@reedsmith.com</p> <p>10</p> <p>11 For Allianz Global Risks US Insurance Company:</p> <p>12</p> <p>13 MARLIE MCDONNELL, ESQUIRE</p> <p>14 CLYDE & CO</p> <p>15 271 17th Street, Suite 1720</p> <p>16 Atlanta, Georgia 30363</p> <p>17 404.410.3150</p> <p>18 marlie.mcdonnell@clydeco.com</p> <p>19</p> <p>20 For Starr Surplus Lines Insurance Company</p> <p>21 and Beazley-Lloyd's Syndicates 2623/623:</p> <p>22</p> <p>23 FERDUSI Z. CHOWDHURY, ESQUIRE</p> <p>24 HINSHAW & CULBERTSON</p> <p>25 800 Third Avenue, 13th Floor</p> <p>New York, New York 10022</p> <p>212.471.6200</p> <p>fchowdhury@hinshawlaw.com</p> <p>For Liberty Mutual Insurance Company:</p> <p>JOEL L. MCNABNEY, ESQUIRE</p> <p>ROBINSON & COLE</p> <p>777 Brickell Avenue, Suite 680</p> <p>Miami, Florida 33131</p> <p>786.725.4119</p> <p>jmcnabney@rc.com</p>	<p>1 INDEX</p> <p>2 Examination By Page</p> <p>3 Ms. Ochoa 8</p> <p>4 Ms. McDonnell 173</p> <p>5 -----oOo-----</p> <p>6 EXHIBITS</p> <p>7 Letter Page</p> <p>8 Exhibit A Plaintiff's Amended Deposition 13</p> <p>9 Notice for Lourdes Reyes</p> <p>10 Exhibit B 3/23/20 email from Allianz to 49</p> <p>11 24 Hour Fitness</p> <p>12 Exhibit C McLarens Report No. 1 dated 3/28/20 65</p> <p>13 Exhibit D 4/2/20 email from Violeta Tuufuli 75</p> <p>14 Exhibit E Claims file for the 24 Hour Fitness 80</p> <p>15 claim</p> <p>16 Exhibit F Allianz Global policy that was in 94</p> <p>17 place for 24 Hour Fitness</p> <p>18 Exhibit G Document titled COVID-19 Changing 114</p> <p>19 Claims Patterns</p> <p>20 Exhibit H Reservation of Rights letter from 120</p> <p>21 McLarens to Mr. Gotleib</p> <p>22 Exhibit I McLarens Report No. 2 dated 4/24/20 124</p> <p>23 Exhibit J McLarens Report No. 3 dated 4/27/20 135</p> <p>24 Exhibit K McLarens Report No. 4 dated 5/15/20 138</p> <p>25 Exhibit L McLarens Report No. 5 dated 6/4/20 150</p> <p>Exhibit M McLarens Report No. 6 dated 6/19/20 152</p> <p>Exhibit N 6/2020 email string between Delores 154</p> <p>Varela and Odell Bradley</p>
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<p>1 A P P E A R A N C E S</p> <p>2 For Allied World National Assurance Company:</p> <p>3 AUSTIN WESTERGOM, ESQUIRE</p> <p>4 MOUND COTTON WOLLAN & GREENGRASS</p> <p>5 Three Greenway Plaza, Suite 1300</p> <p>6 Houston, Texas 77046</p> <p>7 281.572.8350</p> <p>8 bwestergom@moundcotton.com</p> <p>9</p> <p>10 For CNA:</p> <p>11</p> <p>12 MATTHEW SARNA, ESQUIRE</p> <p>13 DLA PIPER</p> <p>14 1201 North Market Street, Suite 2100</p> <p>15 Wilmington, Delaware 19801</p> <p>16 302.468.5700</p> <p>17 matthew.sarna@dlapiper.com</p> <p>18</p> <p>19 ALSO PRESENT: Alejandro Solorzano, Videographer</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 EXHIBITS</p> <p>2 Letter Page</p> <p>3 Exhibit O 6/16/20 email from Stephen Sursene 156</p> <p>4 to Lourdes Reyes</p> <p>5 Exhibit P Article sent to Lourdes Reyes by 156</p> <p>6 Stephen Sursene that says, 24 Hour</p> <p>7 Fitness declares bankruptcy citing</p> <p>8 devastating coronavirus hit</p> <p>9 Exhibit Q McLarens Report No. 7 dated 6/22/20 161</p> <p>10 Exhibit R Email from Mike Allen to the market 165</p> <p>11 insurers dated 7/2/20</p> <p>12</p> <p>13 Exhibit S McLarens Report No. 8 dated 9/3/20 170</p> <p>14</p> <p>15 Exhibit T 4/2/20 email from Lourdes Reyes to 76</p> <p>16 Mike Allen</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1 REMOTE, THURSDAY, SEPTEMBER 29, 2022</p> <p>2 9:03 a.m.</p> <p>3 P R O C E E D I N G S</p> <p>4</p> <p>5 THE VIDEOGRAPHER: Good morning. We are</p> <p>6 on the record. This is the beginning of Media No. 1</p> <p>7 in the deposition of Lourdes Reyes in the matter of</p> <p>8 RS FIT NW LLC. Case No. 20-11558 KBO, held via MS</p> <p>9 Teams.</p> <p>10 This deposition is being taken on</p> <p>11 September 29th, 2022 at 9:03 a.m. The time on the</p> <p>12 monitor -- I'm sorry, the time on the monitor is</p> <p>13 9:03 a.m.</p> <p>14 The court reporter today is Mary Jackson.</p> <p>15 I am Alejandro Solorzano, the videographer on behalf</p> <p>16 of First Legal Depositions located in Los Angeles,</p> <p>17 California.</p> <p>18 This deposition is being videotaped at all</p> <p>19 times unless specified to go off the video record.</p> <p>20 Would all present please identify</p> <p>21 themselves beginning with the noticing attorney?</p> <p>22 MS. OCHOA: Hi, my name is Nat Ochoa. I</p> <p>23 represent 24 Hour Fitness. I am here with my</p> <p>24 colleague Elizabeth Bowman, who is also on.</p> <p>25 MS. MCDONNELL: Hello, this is Marlie</p>	<p style="text-align: right;">Page 8</p> <p>1 EXAMINATION</p> <p>2 BY MS. OCHOA:</p> <p>3 Q. Okay. Good morning, Ms. Reyes. My</p> <p>4 name --</p> <p>5 A. Morning.</p> <p>6 Q. My name is Nat Ochoa, and I'm an attorney</p> <p>7 representing 24 Hour in this case.</p> <p>8 How are you doing?</p> <p>9 A. I'm good.</p> <p>10 Q. Good. Can you please state and spell your</p> <p>11 name for the record?</p> <p>12 A. Lourdes Bernadette Santos Reyes.</p> <p>13 Q. And can you spell it for me?</p> <p>14 A. L-O-U-R-D-E-S. The whole name?</p> <p>15 Q. Yes, please.</p> <p>16 A. Oh. Bernadette, B-E-R-N-A-D-E-T-T-E;</p> <p>17 Santos, S-A-N-T-O-S; Reyes, R-E-Y-E-S.</p> <p>18 Q. Thank you. So I'd like to go over a</p> <p>19 couple of ground rules relating to the fact that</p> <p>20 this deposition is remote. First, Ms. Reyes, can</p> <p>21 you please confirm that you will not use text</p> <p>22 message, chats, emails or any other form of</p> <p>23 communication while testifying under oath during</p> <p>24 this deposition today?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 7</p> <p>1 McDonnell. I represent Allianz Global Risks US</p> <p>2 Insurance Company, and I'm from Clyde & Co.</p> <p>3 THE WITNESS: I'm Lourdes Reyes with</p> <p>4 Allianz Global Risks US Insurance Company.</p> <p>5 MS. CHOWDHURY: Hello, this Ferdusi</p> <p>6 Chowdhury. I'm from the law firm of Hinshaw and</p> <p>7 Culbertson, and we represent Starr and Beazley.</p> <p>8 THE VIDEOGRAPHER: Thank you. Do we have</p> <p>9 anyone else present?</p> <p>10 MS. BOWMAN: Hi. Elizabeth Bowman is</p> <p>11 here. My computer just dropped power, but I'm back.</p> <p>12 MR. MCNABNEY: This is Joel McNabney from</p> <p>13 Robinson & Cole. I represent Liberty Mutual.</p> <p>14 MR. WESTERGOM: Austin Westergom from</p> <p>15 Mound Cotton. I represent Allied World.</p> <p>16 MR. SARNA: Matthew Sarna, DLA Piper,</p> <p>17 filling in today on behalf of CNA.</p> <p>18 THE VIDEOGRAPHER: Thank you, all. If</p> <p>19 there is no one else, would the court reporter</p> <p>20 please swear in the witness, after which, we may</p> <p>21 begin.</p> <p>22 LOURDES REYES,</p> <p>23 having been first duly sworn, was</p> <p>24 examined and testified as follows:</p> <p>25</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Can you affirm that you will not review</p> <p>2 any notes or other documentation while testifying</p> <p>3 under oath, except when asked by me to review</p> <p>4 exhibits?</p> <p>5 A. Yes. Just to let you know, I have</p> <p>6 notifications that pop up, so I just need to delete</p> <p>7 it while we're doing it, so, I mean --</p> <p>8 Q. Okay.</p> <p>9 A. -- I just hit the X or dismiss so that it</p> <p>10 goes away.</p> <p>11 Q. Okay. Sounds good. And if at any time</p> <p>12 anything pops up for a prolonged period, just let me</p> <p>13 know and we can wait for you to exit it.</p> <p>14 A. Okay.</p> <p>15 Q. Did you bring any notes with you today?</p> <p>16 A. No.</p> <p>17 Q. And is anyone in the room with you?</p> <p>18 A. No.</p> <p>19 Q. If at any point someone joins you in the</p> <p>20 room, you or your counsel should affirmatively</p> <p>21 disclose their presence and identify them on the</p> <p>22 record. Do you understand that?</p> <p>23 A. Yes.</p> <p>24 Q. Great. Have you given testimony before?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 98</p> <p>1 any other coverage provisions in the policy might</p> <p>2 apply to the claim?</p> <p>3 A. At the time I wrote -- I reviewed the</p> <p>4 policy?</p> <p>5 Q. Right. At the time you reviewed the</p> <p>6 policy.</p> <p>7 A. If I didn't put it, I didn't -- I didn't</p> <p>8 probably -- at the time that I reviewed the policy,</p> <p>9 if I didn't put it in my notes, then I probably</p> <p>10 didn't see it applicable.</p> <p>11 Q. Okay. Are you familiar with the civil</p> <p>12 authority provision?</p> <p>13 A. Correct.</p> <p>14 Q. And you noted the 45 days civil authority</p> <p>15 limit, you noted that in your notes, so you're</p> <p>16 familiar with that provision generally, right?</p> <p>17 A. Yes.</p> <p>18 Q. Do you remember looking at it in</p> <p>19 connection with the 24 Hour Fitness claim?</p> <p>20 A. I don't remember if I did. I assume I</p> <p>21 did.</p> <p>22 Q. Why do you assume you did?</p> <p>23 A. If I put the notes on the civil authority,</p> <p>24 I assume I read it.</p> <p>25 Q. When you referred to the 45 days civil</p>	<p style="text-align: right;">Page 100</p> <p>1 to object to the extent you're asking for an</p> <p>2 evaluation that would have occurred post litigation</p> <p>3 with counsel. I'm assuming you're referring to</p> <p>4 part -- prelitigation?</p> <p>5 MS. OCHOA: Right.</p> <p>6 THE WITNESS: So prior to litigation, no.</p> <p>7 BY MS. OCHOA:</p> <p>8 Q. Okay. And did you ever make</p> <p>9 determinations about whether there could be coverage</p> <p>10 under that provision prelitigation?</p> <p>11 A. I said no already.</p> <p>12 Q. Just clarifying.</p> <p>13 Did you ever discuss that with anybody?</p> <p>14 A. Discuss what?</p> <p>15 Q. The applicability of the civil authority</p> <p>16 provision with anybody?</p> <p>17 MS. MCDONNELL: Object to the extent it</p> <p>18 calls for attorney-client privilege but you can</p> <p>19 answer.</p> <p>20 THE WITNESS: Before the litigation, no.</p> <p>21 BY MS. OCHOA:</p> <p>22 Q. Did you ever review the general business</p> <p>23 coverage of the policy?</p> <p>24 A. I may have.</p> <p>25 Q. You don't recall?</p>
<p style="text-align: right;">Page 99</p> <p>1 authority in your notes, that makes you think that</p> <p>2 you reviewed it in connection with the claim?</p> <p>3 A. Correct.</p> <p>4 Q. Did you attempt to evaluate whether there</p> <p>5 might be coverage under that provision for the</p> <p>6 claim?</p> <p>7 A. No, we don't have details of the lost yet.</p> <p>8 Q. So to this day, you've never attempted to</p> <p>9 evaluate whether there might be coverage under that</p> <p>10 provision?</p> <p>11 MS. MCDONNELL: Object to the form.</p> <p>12 THE WITNESS: We don't have the supporting</p> <p>13 documentation that I requested from the insured and</p> <p>14 the lawsuit was filed. We've asked for information,</p> <p>15 and nothing was provided that we would have to</p> <p>16 evaluate the applicable coverages under the policy.</p> <p>17 BY MS. OCHOA:</p> <p>18 Q. Okay. So that's a no, right?</p> <p>19 MS. MCDONNELL: Object to the form.</p> <p>20 THE WITNESS: What's a no? To what?</p> <p>21 BY MS. OCHOA:</p> <p>22 Q. That you have not evaluated whether</p> <p>23 coverage under that provision -- whether there is</p> <p>24 coverage under that provision?</p> <p>25 MS. MCDONNELL: Are you -- I'm just going</p>	<p style="text-align: right;">Page 101</p> <p>1 A. I don't recall. It's 20 years -- two</p> <p>2 years ago.</p> <p>3 Q. How many COVID claims have you handled</p> <p>4 again, you said 20 or so?</p> <p>5 A. 20 to 30.</p> <p>6 Q. Okay. And you don't recall whether or not</p> <p>7 you've reviewed the business interruption coverage</p> <p>8 section of the 24 Hour Fitness policy with regard to</p> <p>9 this claim, right?</p> <p>10 MS. MCDONNELL: Object to the form.</p> <p>11 THE WITNESS: I would have not reviewed it</p> <p>12 because the claim -- there is no detail of claim.</p> <p>13 What would I review on the policy if there's no</p> <p>14 claim? I need to get the details of the loss for me</p> <p>15 to review the applicable coverage. If there is no</p> <p>16 claim submitted, there's nothing for me to review.</p> <p>17 So I'm not going to review it, I'm just going to</p> <p>18 note that the policies that could -- or the policy</p> <p>19 language could be applicable to the loss, but I</p> <p>20 would have not reviewed it until I have the claim</p> <p>21 information.</p> <p>22 BY MS. OCHOA:</p> <p>23 Q. But you reviewed whether the communicable</p> <p>24 disease endorsement was applicable?</p> <p>25 MS. MCDONNELL: Object to the form.</p>

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1 THE WITNESS: I told you I just noted the
2 clauses under the policy that would be applicable.
3 I don't have the details of the loss. What am I
4 going to review it from or how it will apply? I
5 don't have a claim.

6 BY MS. OCHOA:

7 Q. I'm not trying to attack you right now.

8 A. I know, it's just like uh -- you asked me,
9 and then you ask me again. I just told you.

10 Okay. Let's move on.

11 Q. Do we need to take a break here just to
12 sort of diffuse the situation? I'm not trying to be
13 antagonist. I'm just trying to ask you about
14 details of your thought process at the time.

15 MS. MCDONNELL: Yeah, let's take a break.
16 And I don't want to put a pending question out
17 there, but I wasn't sure, Nat, if, when you're
18 saying review, do you mean like read the policy
19 provision or evaluate it?

20 MS. OCHOA: My first line of questioning
21 was about simply reading the policy provision. The
22 second line of questioning was whether prelitigation
23 there was an evaluation of the applicability of the
24 coverage.

25 MS. MCDONNELL: Right. I just meant when

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1 you said "review," I didn't know if you meant that
2 to read or evaluate, and that's all. I don't know
3 if maybe that would clarify anything, but...

4 MS. OCHOA: Evaluate, yeah.

5 MS. MCDONNELL: Review it means evaluate?

6 MS. OCHOA: Yes, in this line of
7 questioning, review meant evaluate.

8 MS. MCDONNELL: Okay. Let's just take a
9 quick break, and we can come back.

10 MS. OCHOA: Okay. That sounds good.

11 MS. MCDONNELL: Okay, thanks.

12 MS. OCHOA: Five minutes?

13 MS. MCDONNELL: Yeah, that's perfect.

14 MS. OCHOA: Okay.

15 THE VIDEOGRAPHER: Okay. The time is now
16 11:25 a.m., and we are off the record.

17 (Whereupon a recess was taken.)

18 THE VIDEOGRAPHER: Okay. The time is now
19 11:32 a.m., and we are back on the record.

20 BY MS. OCHOA:

21 Q. Hi again. I -- before we move on to a
22 different topic, I want to just clarify and circle
23 back where we just were and confirm just one thing.

24 You testified that you read the policy
25 from cover to cover and that would have included,

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1 obviously, the civil authority provision or the
2 business interruption coverage section, but you
3 didn't evaluate whether coverage applied under those
4 provisions, correct, because you're saying that you
5 didn't have enough information to do so?

6 A. Correct.

7 Q. What information would you need to have
8 evaluated that that you didn't receive?

9 A. The details of the loss, of what happened,
10 and how the circumstance of the loss would trigger
11 coverage under the policy.

12 Q. Had you received, though, details as far
13 as like 24 Hour Fitness has confirmed at these
14 locations that there was a presence of COVID-19,
15 that sort of thing, that's not enough?

16 MS. MCDONNELL: Object to the form.

17 THE WITNESS: No.

18 BY MS. OCHOA:

19 Q. No, that's not enough?

20 A. No.

21 Q. What more would you need specifically?

22 MS. MCDONNELL: Object to the form.

23 THE WITNESS: If you look at the coverage
24 for interruption by communicable disease, there is a
25 requirement for the actual presence of the

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1 disease -- of the spreadable disease, and the direct
2 result of a declaration of civil authority enforcing
3 or regulating the communicable disease. So we did
4 not have that information.

5 Q. Let's open Exhibit F if you could, if you
6 already have it open, and I want to direct your
7 attention to the paragraph at the bottom that says,
8 For the purpose of this extension. Do you see that?

9 A. Yes.

10 Q. It says, For the purpose of this extension
11 the presence of and spread of communicable disease
12 will be considered direct physical damage. Do you
13 see that?

14 A. Yes.

15 Q. Do you agree that if there is presence of
16 COVID-19, there is direct physical damage?

17 A. If there's --

18 MS. MCDONNELL: Object to form.

19 THE WITNESS: -- actual presence of the
20 disease at the location and there is a direct -- and
21 the declaration of civil authority, then this
22 endorsement would be triggered.

23 BY MS. OCHOA:

24 Q. Thank you. Around the time that you were
25 first assigned to work on the 24 Hour Fitness claim,

<p style="text-align: right;">Page 106</p> <p>1 were you aware of any measures that were available 2 to test for the presence of COVID-19 inside of a 3 business location? 4 A. I don't recall. I don't think so. 5 Q. You don't think that around the time, in 6 March of 2020, there was capability to test for the 7 presence of COVID-19, right? 8 A. Yes. 9 Q. Have you ever been made aware of any 10 measures that were available to test for the 11 presence of COVID in a business location at any 12 time? 13 A. Test of COVID how? On a person? 14 Q. To confirm -- to confirm whether there's 15 COVID-19 on the premises, i.e., on equipment; sure, 16 people on the premises. 17 MS. MCDONNELL: Object to the form. 18 THE WITNESS: Testing on people, yes; but 19 on the premises, no. 20 BY MS. OCHOA: 21 Q. To your knowledge did Allianz do any 22 testing of any insured business locations for the 23 presence of COVID-19? 24 A. I'm not aware. 25 Q. Have you ever seen any guidance that</p>	<p style="text-align: right;">Page 108</p> <p>1 A. On any claim? 2 Q. Yeah. 3 A. That's their job, yes. 4 Q. Do they always go and visit a location? 5 A. Yes. 6 Q. So if you're saying they always go visit a 7 location, wouldn't that mean that you would also say 8 that someone like McLarens went and visited the 24 9 Hour Fitness location, is that what you're saying? 10 A. If there was damage that they are going to 11 show the adjuster, then, yes, they will. 12 Q. Okay. But you don't know specifically as 13 it relates to this claim? 14 A. No. 15 Q. Is it -- scratch that. 16 In connection with your work on the 24 17 Hour Fitness claim specifically, did you ever 18 determine what 24 Hour Fitness would need to 19 demonstrate to show that it had the actual presence 20 of COVID-19 at its locations? 21 MS. MCDONNELL: Object to the form. 22 THE WITNESS: We asked specific 23 information for locations that the insured had 24 advised that they presumed and so we requested 25 further information to clarify that there was actual</p>
<p style="text-align: right;">Page 107</p> <p>1 Allianz published for its policyholder to give 2 advice on how to test for the presence of COVID-19 3 at a -- at a location? 4 A. I'm not aware. 5 Q. Would that have not been a subject of the 6 COVID memorandum that you referred to earlier? 7 A. I don't even recall that memo. I just 8 said if there is, that was sent, but I don't recall. 9 Q. Okay. Have you ever read any literature 10 that discussed the testing of any insured business 11 locations for the presence of COVID? 12 A. Not that I recall. 13 Q. As part of the investigation of the 24 14 Hour Fitness claim that McLarens did, to your 15 knowledge, did anyone from McLarens visit any of the 16 24 Hour Fitness cite locations? 17 A. To my knowledge, I don't recall, no. I 18 don't know. 19 Q. On any claims that you've worked on, have 20 you ever had a market adjuster go and visit a 21 location where a loss took place? 22 A. Can you repeat the question? 23 Q. Sure. On any claims that you've worked 24 on, have you ever had a market adjuster go and visit 25 a location where a loss took place?</p>	<p style="text-align: right;">Page 109</p> <p>1 presence of COVID of the site and what orders of 2 civil authority where applicable to the location. 3 BY MS. OCHOA: 4 Q. Actual presence as in -- where are you 5 getting the language "actual presence" from? 6 A. On the communicable disease language 7 endorsement. 8 Q. Let's pull that up if you still have it. 9 Are you referring to the paragraph that 10 reads, All coverage must be directly resulting from 11 access being prohibited or described at any location 12 or portion thereof, quote, due to the actual 13 presence of and spread of communicable diseases -- 14 A. Yes. 15 Q. -- is that what you're referring to? 16 What do you mean by -- what's your 17 understanding of "actual presence"? 18 MS. MCDONNELL: Object to form. 19 THE WITNESS: That they determined that 20 COVID was actually at the site, and they are unable 21 to go to the location and that civil authority was 22 enforcing that ordinance prohibiting access to the 23 location because of the COVID. 24 BY MS. OCHOA: 25 Q. Do you agree that if someone infected with</p>

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1 COVID entered a 24 Hour Fitness location that
 2 COVID-19 would have been present at that location?
 3 MS. MCDONNELL: Object to the form.
 4 **THE WITNESS: We would have to verify when**
 5 **that person had the COVID, when they entered the**
 6 **premises, how long they were at the premises. I**
 7 **mean, details that would help us understand how the**
 8 **COVID would be present at the location.**
 9 BY MS. OCHOA:
 10 Q. Why would -- well, let me ask it this way.
 11 If someone has COVID-19, and it's
 12 determined that they had COVID-19, and they walked
 13 into a 24 Hour Fitness gym and they worked out,
 14 would you agree that that would mean that COVID-19
 15 was present at that location?
 16 MS. MCDONNELL: Object to the form.
 17 **THE WITNESS: They knew already that they**
 18 **had COVID, and they still went to the gym?**
 19 BY MS. OCHOA:
 20 Q. It doesn't matter whether or not they knew
 21 if anyone had COVID. I'm saying if they had COVID.
 22 Just a fact. If someone had COVID, and they went to
 23 the gym and they worked out in the gym, would you
 24 agree that that means that COVID was present at the
 25 location?

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1 MS. MCDONNELL: Object to the form.
 2 **THE WITNESS: Like I said, I need to**
 3 **confirm whether that person knew that he had already**
 4 **COVID and still went to the gym. If he had**
 5 **claimed he had COVID, when did he have the COVID?**
 6 **Did he have it after he went to the gym or before he**
 7 **went to the gym, how long he has had the COVID.**
 8 BY MS. OCHOA:
 9 Q. Let's say that he knew that he had COVID
 10 and he walked into the gym with COVID?
 11 MS. MCDONNELL: Object to the form. Are
 12 you -- are you asking her to answer a hypothetical?
 13 MS. OCHOA: This is a very -- it's a very
 14 straightforward question.
 15 BY MS. OCHOA:
 16 Q. If someone had COVID-19, they knew that
 17 they had COVID, they walked into the gym, and they
 18 worked out, would you agree that COVID was present
 19 at that location?
 20 **A. It's possible.**
 21 Q. What do you mean "it's possible"?
 22 MS. MCDONNELL: Object to the form.
 23 **THE WITNESS: Well, COVID is transmitted**
 24 **through -- through the air, so I don't know how --**
 25 **like I said, it's possible that if he had COVID and**

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1 **used the equipment, then maybe he had brought the**
 2 **COVID to the location.**
 3 Q. In what circumstance would he have not
 4 brought the COVID to the location if he had COVID
 5 and walked in?
 6 MS. MCDONNELL: Object to the form.
 7 **THE WITNESS: I don't know how -- I mean,**
 8 **COVID people -- was he wearing a mask? I mean, I**
 9 **don't know. I...**
 10 BY MS. OCHOA:
 11 Q. Okay. Did you ever have any discussions
 12 with Mr. Allen about what information 24 Hour
 13 Fitness could provide that would demonstrate the
 14 presence of COVID-19 at the location?
 15 MS. MCDONNELL: Object to the form.
 16 **THE WITNESS: Personally discussing it**
 17 **with Mike, I don't remember. But I'm assuming we**
 18 **all did require what needed to satisfy the**
 19 **conditions under the policy.**
 20 BY MS. OCHOA:
 21 Q. So presumably there would have been a call
 22 with all the market insurers and Mr. Allen that
 23 discussed what 24 Hour Fitness could provide that
 24 would demonstrate the presence of COVID-19?
 25 **A. Possibly. I don't remember.**

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1 Q. And you don't remember what specifically
 2 what was decided on or discussed?
 3 **A. No.**
 4 Q. What about with anyone internally at
 5 Allianz did you ever talk to anyone about that?
 6 **A. No.**
 7 Q. Do you recall receiving information from
 8 24 Hour Fitness about individuals that tested
 9 positive for COVID-19 that were on 24 Hour Fitness's
 10 premises?
 11 **A. I vaguely recall getting a list of**
 12 **locations, and I presumed -- or people going, with**
 13 **COVID, going to the locations, but I believe there's**
 14 **not -- we requested additional information, but we**
 15 **never got it and the lawsuit was filed.**
 16 Q. Okay. Do you know what 24 Hour Fitness
 17 locations were implicated?
 18 **A. I don't recall.**
 19 Q. Do you remember being provided information
 20 that allowed you to verify that an employee had
 21 tested positive for COVID?
 22 MS. MCDONNELL: Object to the form.
 23 **THE WITNESS: Can you repeat the question,**
 24 **please?**
 25

<p style="text-align: right;">Page 118</p> <p>1 MS. MCDONNELL: Object to the form.</p> <p>2 THE WITNESS: Is that what it said?</p> <p>3 BY MS. OCHOA:</p> <p>4 Q. Yeah, I'll read it one more time. It</p> <p>5 says, A number of outbreaks of coronavirus have been</p> <p>6 linked to high risks -- high-risk environments such</p> <p>7 as gyms.</p> <p>8 A. Okay. So what's your question again?</p> <p>9 Q. Would you agree with Allianz that a gym is</p> <p>10 a high-risk environment?</p> <p>11 A. Yes.</p> <p>12 Q. And why would you agree with that? Why</p> <p>13 would you agree that a gym is a high-risk</p> <p>14 environment?</p> <p>15 A. Because the people are the carriers, and</p> <p>16 people go in and out of the gym.</p> <p>17 Q. And do you think the -- as opposed to</p> <p>18 other locations, a gym is a high-risk environment</p> <p>19 because more people go in and out of that location?</p> <p>20 MS. MCDONNELL: Object to the form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MS. OCHOA:</p> <p>23 Q. If a gym a high-risk environment because</p> <p>24 more people go in and out of that location as</p> <p>25 opposed to other environments and someone that</p>	<p style="text-align: right;">Page 120</p> <p>1 (Whereupon Exhibit H was marked for</p> <p>2 identification.)</p> <p>3 THE WITNESS: Okay.</p> <p>4 BY MS. OCHOA:</p> <p>5 Q. And if you could briefly skim this, you</p> <p>6 will see that it is a Reservation of Rights letter</p> <p>7 from McLarens to Mr. Gotleib, and throughout the</p> <p>8 document there are revisions in red and blue, right?</p> <p>9 A. Yes.</p> <p>10 Q. And the email let's us know that those</p> <p>11 were made by Starr and Somo, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Can you please go down to PDF, Page 4,</p> <p>14 Bates No. AGRUS000405.</p> <p>15 A. Okay.</p> <p>16 Q. And it says, In addition, Endurance</p> <p>17 American Specialty Insurance company policy number,</p> <p>18 and then it lists the policy number, contains the</p> <p>19 following general change endorsement as Endorsement</p> <p>20 4., and then it lists -- it seems like it has a copy</p> <p>21 and paste of the endorsement there in the letter.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall that the endurance policy</p> <p>25 had an exclusion for communicable disease?</p>
<p style="text-align: right;">Page 119</p> <p>1 entered the gym tested positive, do you believe that</p> <p>2 it would be likely that COVID would spread in that</p> <p>3 gym?</p> <p>4 MS. MCDONNELL: Object to the form.</p> <p>5 THE WITNESS: It will depend if the person</p> <p>6 that tested positive was wearing a mask or the</p> <p>7 other -- I mean, it depends on the circumstance, but</p> <p>8 it could.</p> <p>9 BY MS. OCHOA:</p> <p>10 Q. Do you believe that if more people are</p> <p>11 present in the gym such that it's a high-risk</p> <p>12 environment that the chance of COVID-19 would likely</p> <p>13 increase since more people would be in the space?</p> <p>14 MS. MCDONNELL: Object to the form.</p> <p>15 THE WITNESS: Yes. If there's more</p> <p>16 people, more chance of spreading it.</p> <p>17 BY MS. OCHOA:</p> <p>18 Q. Okay. We're going briefly go back to</p> <p>19 Exhibit D just for the purpose of reminding you what</p> <p>20 it is. So if you can open that back up.</p> <p>21 A. Okay.</p> <p>22 Q. Once again, this is the email from Mike</p> <p>23 Allen that says, Attached is the revised draft ROR</p> <p>24 with revisions made by Starr and Somo.</p> <p>25 Now, I would like you to open Exhibit H.</p>	<p style="text-align: right;">Page 121</p> <p>1 A. I don't recall, but I've seen this as</p> <p>2 showing they did have it.</p> <p>3 Q. Okay. Do you recall any other insurers</p> <p>4 that had this exclusion?</p> <p>5 A. No, not aware.</p> <p>6 Q. Now, if you could go to the bottom of that</p> <p>7 same page, there are -- and it's in red, and it</p> <p>8 says, as we continue our investigation, we request</p> <p>9 that you provide us with the following information,</p> <p>10 colon, and then it has five different things listed</p> <p>11 out there.</p> <p>12 Do you recall having any comment on those</p> <p>13 particular questions?</p> <p>14 A. What do you mean, that it came from me?</p> <p>15 Q. Right.</p> <p>16 A. No.</p> <p>17 Q. Did you have any hand whatsoever in</p> <p>18 drafting the questions at all?</p> <p>19 A. I don't recall, no.</p> <p>20 Q. Do you recall any discussions with the</p> <p>21 market about these questions?</p> <p>22 A. I don't recall.</p> <p>23 Q. To your knowledge, who drafted these</p> <p>24 questions?</p> <p>25 A. I'm assuming based -- if it was red that</p>

<p style="text-align: right;">Page 142</p> <p>1 A. I'm going to be speculating. I don't know 2 what the main reason why he specifically asked that. 3 Q. I'm going to read the first paragraph of 4 the response. If the question seeks to ascertain 5 whether access to or from our clubs was physically 6 blocked by some object, then we are not aware of 7 that at this time. 8 However, as a result of the presence of 9 individuals with -- with or presumed to have 10 COVID-19 at our locations, including our members and 11 employees, the social distancing guidelines enacted 12 by government agencies indicating it would be unsafe 13 to operate given the prevalence of individuals in 14 the community with the COVID-19 disease, including 15 our members and employees, and the various 16 stay-at-home and similar orders requiring closure of 17 our business, access to our clubs has been 18 prohibited. Do you see that? 19 A. Yes. 20 Q. Did you discuss this response with anyone? 21 A. No. 22 Q. The second paragraph reads, It should be 23 noted that governmental orders confirmed the fact 24 that the virus causes contamination of property. 25 For instance, the City of New York's order dated</p>	<p style="text-align: right;">Page 144</p> <p>1 A. Yes. 2 Q. -- in your definition? 3 A. Yes. 4 Q. After receiving this information, this 5 additional information, with the positive test 6 outlined as well as information to Question 2, at 7 that time, you still were saying there was not 8 enough information to evaluate the claim? 9 MS. MCDONNELL: Object to the form. 10 THE WITNESS: The items that they were 11 saying that -- where -- those 20-something items 12 that they said, they were not specific. Let's just 13 go to the first one that said that on March 8th was 14 in -- an individual was in Whippany who tested 15 positive for COVID-19. We needed further 16 information. 17 When did that individual test positive and 18 when was he at the site and which site -- okay, in 19 Whippany. When was he or she tested positive. He 20 was on -- at the facility on March 8th and tested 21 positive on March 11. So when did he test positive? 22 Was it March 10th; March 9th? We don't know. So 23 additional information were requested from the 24 insured, but we never got it. 25 Q. So the additional information you're</p>
<p style="text-align: right;">Page 143</p> <p>1 March 16, 2020 states that the virus physically is 2 causing property loss and damage. Orders issued in 3 various other locations contain similar language 4 including Los Angeles and San Francisco. 5 Did you ever review the orders referenced 6 in this paragraph? 7 A. I don't recall. 8 Q. Were you aware that there were certain 9 orders that specifically said the virus was causing 10 property loss and damage? 11 A. I don't remember. I don't recall. 12 Q. Would it have been your practice to have 13 reviewed government orders if an insured is 14 referencing them? 15 A. Yes. 16 Q. So is it likely that you reviewed those 17 orders or no? 18 A. If they provided the order. 19 Q. The insured would have to have attached 20 the order, is that what you're saying? 21 A. Yes. 22 Q. So the only time you would review the 23 order is if the insured attached it? 24 A. If the insured provided it. 25 Q. Which means attached --</p>	<p style="text-align: right;">Page 145</p> <p>1 saying you needed was the date when they tested 2 positive? 3 A. Well, further information. Not just for 4 the specific -- further information that will 5 confirm that the COVID person -- that COVID was at 6 the site at the time, by whom and when. And, like I 7 said, when they tested positive, was it before or 8 when they were at the site? There were questions 9 that were asked but never responded to. 10 Q. I'm talking about this question 11 specifically. I want to know what more you need 12 from this question specifically, this answer, in 13 order to evaluate the claim. I believe you just 14 said what you needed specifically was when the 15 person tested positive? 16 A. When he -- 17 Q. Is there anything else you needed from 18 this question and answer to evaluate the claim? 19 MS. MCDONNELL: Object to the form, 20 mischaracterizes the testimony. 21 THE WITNESS: What was the government 22 issue -- order, because under the communicable 23 disease, it required that the actual presence of 24 COVID and the government order that prohibited 25 access to the facility.</p>

<p style="text-align: right;">Page 158</p> <p>1 investigation reports; title, Report No. 6. And</p> <p>2 under notes, it says, No response received from</p> <p>3 insured, only communicable disease coverage.</p> <p>4 Insured filed for bankruptcy Chapter 11. Insured</p> <p>5 expects to receive 250 million in financing to</p> <p>6 assist in restructuring operations. Insured will</p> <p>7 continue operations while restructuring. Do you see</p> <p>8 that?</p> <p>9 A. Yes.</p> <p>10 Q. Why do you think it was important to note</p> <p>11 in the claim file that 24 Hour Fitness expected to</p> <p>12 receive financing to assist in restructuring its</p> <p>13 operations?</p> <p>14 A. If the insured is receiving financing, and</p> <p>15 the insured is claiming BI, or financial loss, we</p> <p>16 need to know what's going on with the bankruptcy and</p> <p>17 their claim.</p> <p>18 Q. For what reason? Can you expand on that a</p> <p>19 little bit?</p> <p>20 A. If they're going to be receiving a</p> <p>21 claim -- payment on the bankruptcy, is there going</p> <p>22 to be a loss? I don't know. We didn't do any</p> <p>23 investigation or complete the investigation because</p> <p>24 we didn't have enough information, but we need to</p> <p>25 know if the insured received money and how much</p>	<p style="text-align: right;">Page 160</p> <p>1 money that they're getting from the bankruptcy.</p> <p>2 Q. So if the insured is receiving money -- if</p> <p>3 they suffered -- if they had to become bankrupt</p> <p>4 because of COVID-19 and they had recovered a certain</p> <p>5 amount of money, are you saying that would affect</p> <p>6 the coverage determination because the payout from</p> <p>7 the insurer should be essentially reduced from that</p> <p>8 or there shouldn't be overlap from that?</p> <p>9 MS. MCDONNELL: Object to the form.</p> <p>10 THE WITNESS: That's speculation. I don't</p> <p>11 know what their claim is. I'm just looking at a</p> <p>12 bigger picture.</p> <p>13 If they receive money, they're filing a</p> <p>14 loss for income, I need to know what they're</p> <p>15 claiming for, making sure there's no overlap.</p> <p>16 BY MS. OCHOA:</p> <p>17 Q. Overlap of what?</p> <p>18 A. Of the loss they're claiming. If they're</p> <p>19 claiming a bankruptcy and receiving money for the</p> <p>20 bankruptcy, and they're filing a loss of income, is</p> <p>21 there an overlap? I don't know. I don't know what</p> <p>22 their claim is.</p> <p>23 MS. OCHOA: Okay. We've been going for an</p> <p>24 hour. Do you want to stop here for a minute before</p> <p>25 I go on to my next line of questioning?</p>
<p style="text-align: right;">Page 159</p> <p>1 money did the insured lose.</p> <p>2 Q. How would the insured receiving money from</p> <p>3 a bankruptcy affect a coverage determination in a</p> <p>4 pay-out by the insurers?</p> <p>5 MS. MCDONNELL: Object to the form.</p> <p>6 THE WITNESS: The insured, on the news,</p> <p>7 said that the bankruptcy was due to the COVID -- or</p> <p>8 the coronavirus. So if they're getting money, and</p> <p>9 they're claiming from insurers, we need to know</p> <p>10 what's going on. We -- like I said, we didn't do</p> <p>11 evaluation of their BI because they haven't</p> <p>12 submitted documentation.</p> <p>13 Q. I'm focusing just on the bankruptcy. Why</p> <p>14 would receiving money via the bankruptcy affect the</p> <p>15 coverage determination?</p> <p>16 MS. MCDONNELL: Object to the form.</p> <p>17 THE WITNESS: The insured said they're</p> <p>18 filing bankruptcy due to Corona.</p> <p>19 BY MS. OCHOA:</p> <p>20 Q. Can you explain how that would affect --</p> <p>21 why that would affect your evaluation of coverage in</p> <p>22 your coverage determination?</p> <p>23 A. Like I said, if they received money and</p> <p>24 they're filing for a claim, we need to know that</p> <p>25 there's no overlap on their loss of income and the</p>	<p style="text-align: right;">Page 161</p> <p>1 MS. MCDONNELL: Yeah. How much longer do</p> <p>2 you have left?</p> <p>3 MS. OCHOA: Not -- not too much longer,</p> <p>4 maybe another 45.</p> <p>5 MS. MCDONNELL: Okay. Yeah, let's take a</p> <p>6 five minute.</p> <p>7 MS. OCHOA: Okay. Sounds good.</p> <p>8 MS. MCDONNELL: Bye.</p> <p>9 THE VIDEOGRAPHER: Okay. The time is now</p> <p>10 1:24 p.m., and we are now off the record.</p> <p>11 (Whereupon a recess was taken.)</p> <p>12 THE VIDEOGRAPHER: The time is now 1:32</p> <p>13 p.m., and we are back on the record.</p> <p>14 BY MS. OCHOA:</p> <p>15 Q. Okay. If you could open up and we can</p> <p>16 mark Exhibit Q.</p> <p>17 (Whereupon Exhibit Q was marked for</p> <p>18 identification.)</p> <p>19 BY MS. OCHOA:</p> <p>20 Q. And let mow know when you have that pulled</p> <p>21 up.</p> <p>22 A. Okay.</p> <p>23 Q. This is the seventh McLarens report dated</p> <p>24 June 22nd, 2020. You would have received this on</p> <p>25 or -- on or about that time, correct?</p>

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STATE OF CALIFORNIA)
COUNTY OF SAN JOAQUIN)

I, MARY JACKSON, hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that to the best of my ability, the foregoing transcript constitutes a full, true, and correct report of the proceedings heard via Zoom by me, a Certified Shorthand Reporter and disinterested person, and was thereafter transcribed into typewriting, and that the pertinent provisions of the applicable code or rules of civil procedure relating to the notification of the witness and counsel for the parties hereto of the availability of the original transcript of the deposition for reading, correcting and signing have been met.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said action.

DATED: October 29, 2023

Mary Jackson
MARY JACKSON, CSR NO. 8688

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Errata Sheet

NAME OF CASE: 24 HOUR FITNESS vs CONTINENTAL CASUALTY CO.

DATE OF DEPOSITION: SEPTEMBER 29, 2022

NAME OF WITNESS: LOURDES REYES

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page ____ Line ____ Reason ____

From _____ to _____

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LOURDES REYES